



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/507,228

03/07/2005

Ralf Widera

520.1046

1768

7278

7590

02/22/2008

DARBY & DARBY P.C.

P.O. BOX 770

Church Street Station

New York, NY 10008-0770

EXAMINER

LIN, WEN TAI

ART UNIT

PAPER NUMBER

2154

MAIL DATE

DELIVERY MODE

02/22/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/507,228	Applicant(s) WIDERA ET AL.	
	Examiner Wen-Tai Lin	Art Unit 2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 25 – 55 are presented for examination.
2. The text of those sections of Title 35, USC code not included in this action can be found in the prior Office Action.
3. It is noted that the phrase “a least” in claim 36, line 3 appears to be a typo of “at least”. Correction is requested.

Claim Rejections - 35 USC § 102

4. Claims 25-52 and 55 are rejected under 35 U.S.C. 102(e) as being anticipated by Cruickshank et al.[U.S. PGPub 20030126256].
5. Cruickshank was cited in the previous office action.
6. As to claims 25 and 29, Cruickshank teaches the invention as claimed including: a method for automatically indicating status information via an output device, the status information including at least one of a status of a component of a measuring system, a status of a connection of the measuring system, and a measurement result of the measuring system [e.g., Abstract], the method comprising:

sending measurement packets with an adjustable distribution in time so as to determine first status information [e.g., paragraphs 30 and 47].

assigning first status information to a first status range of a plurality of fixed status ranges according to at least one first predetermined condition, the first status range being limited by at least one first threshold value [e.g., paragraphs 7-8];

outputting the assigned first status range [e.g., paragraph 139; Fig.3; Table 5];
and

automatically updating the first status information at a predetermined time interval [paragraphs 132-139; 142-146], wherein the outputting is performed so as to enable an easy identification of the assigned first status range [Tables 1 and 5].

7. As to claim 26, Cruickshank teaches that the method further comprises:

assigning second status information to a second status range [e.g., the second metric] of the plurality of fixed status ranges according to at least one second predetermined condition, the second status range being limited by at least one second threshold value ;

outputting the assigned second status range [e.g., table 5]; and

automatically updating the second status information at the predetermined time interval [paragraphs 32, 143].

8. As to claims 27 and 28, Cruickshank further teaches that the measuring system includes at least a portion of a telecommunications network, wherein that the

telecommunications network includes at least one of an internet and an intranet [e.g., paragraph 24].

9. As to claims 30-31, Cruickshank further teaches that the outputting includes displaying the assigned first status range in a graphic using an output device [e.g., Figs. 3-6] and further comprising displaying the first status information in the graphic using the output device, wherein the graphic includes a matrix [e.g., Tables 1 and 5; note that a table has its elements/cells arranged as a matrix]

10. As to claims 32-34, Cruickshank further teaches that the graphic includes a graphical user interface, a first level of the first status range on the graphical user interface having at least one underlying representation level capable of being made visible by activation in the first level, wherein the graphical user interface includes a window [Figs. 3-6 and 8, each of which is a window], wherein at least one of the first status information and the first status range is displayed, relative to the first level, in increased detail in the at least one underlying representation level [note that Fig. 8 shows increased details of an element in Figs. 3-5].

11. As to claim 35, Cruickshank further teaches that each of the status ranges has a respective different color so as to individualize each respective status range [e.g., paragraph 144].

12. As to claim 36, Cruickshank further teaches that:

the plurality of status ranges includes a second status range;

the first and second status ranges reflect at least one of a magnitude of a first measurement result, a plurality of second measurement results, and a value describing a status of a first component of the measuring system [Fig.3; Table 5]; and

the first and second status ranges together form a hierarchy [e.g., paragraph 144].

13. As to claim 37, Cruickshank further teaches that the measuring system includes a first and a second measuring computer [e.g., 12-14, Fig.1] and a control computer [e.g., 20, Fig.1] configured to control the first and second measuring computer; and

the first status information is based on at least one of a status of the first measuring computer, a quality of a measurement connection between the first and second measuring computers, a reachability of at least one of the first and second measuring computers by the control computer, a time synchronization of the first and second measuring computers, and a currentness of the status information [e.g., paragraphs 30-31].

14. As to claim 38, Cruickshank further teaches that a first component of the measuring system includes a measuring computer; the first status information relates to a status of the measuring computer; and the displaying the first status information includes

displaying the first status information in an assigned first field in a first column of the matrix [See Table 5].

15. As to claim 39, Cruickshank further teaches that the outputting includes displaying the assigned first status range in a matrix of a graphic using the output device, and further comprising:

displaying the first status information in an assigned first field in a first column of the matrix, the first status information being based on a status of the first measuring computer [e.g., first row of Table 5 represents a first modem performance metric associated with the first measuring computer];

displaying an assigned second status range in the matrix using the output device; and displaying second status information in an assigned second field in the first column of the matrix using the output device, the second status information being based on a status of the second measuring computer [e.g., second row of Table 5 represents a second modem performance metric associated with the second measuring computer].

16. As to claim 40, Cruickshank further teaches that the first and second measuring computers are represented in the assigned respective field in the first column of the matrix by a respective identifier including at least one of a name and an IP address [See the left column of Table 5, which are modem identifiers associated with their measuring computers.

17. As to claim 42, Cruickshank further teaches that a first component of the measuring system includes a measuring computer, and further comprising displaying the first status information in an assigned first field in a first column of a matrix of a graphic, the first status information being based on a status of the measuring computer, the first status information including at least one of a status of a time synchronization of the measuring computer, the reachability of the measuring computer by a control computer, and at least one error message of the measuring system regarding the measuring computer [e.g., Table 1, wherein error rates are incorporated into the calculation of the performance metrics].

18. As to claim 43, Cruickshank further teaches that a first component of the measuring system includes a measuring computer, and further comprising displaying the first status information in an assigned first field in a first column of a matrix of a graphic, the first status information being based on a status of the measuring computer, an assignment of the measuring computer to a control computer being indicated in a respective field in a first row of the matrix [e.g., Table 5, wherein the modem a identifier is displayed in a first row of the matrix].

19. As to claims 41 and 44 - 46, since the features of these claims can also be found in claims 25-40, they are rejected for the same reasons set forth in the rejection of claims 25-40 above.

20. As to claims 47-48, Cruickshank further teaches that the outputting includes displaying the assigned first status range in a matrix of a graphic using the output device and further comprising displaying the first status information in the graphic using the output device, the graphic including a graphical user interface, a first level of the first status range on the graphical user interface [e.g., Fig. 3] having a second representation level capable of being made visible by activation in the first level, a second field of the matrix being disposed in a second row or column and including the second representation level showing a status of a first measurement connection in more detail than the first level, wherein the second representation level indicates a type of the first measurement connection between first and second measuring computers of the measuring system and a status of at least one measurement parameter determining a quality of the first measurement connection [paragraph 146; note that the lower portion 88 of Fig.3 is activated by selection of a relevant category in the upper portion 86, Fig.3].

21. As to claim 49, Cruickshank further teaches that the status of the at least one measurement parameter is based on at least one transmission characteristic in the first measurement connection [e.g., paragraph 13].

22. As to claim 50, Cruickshank further teaches that the at least one transmission characteristic includes at least one of a packet delay, an IP delay variation, and a

Art Unit: 2154

packet loss [e.g., paragraphs 8 and 13; i.e., the network characteristics includes packet delay and loss].

23. As to claim 51, Cruickshank further teaches that the second representation level has a subordinate third representation level showing measurement results in detail over a predetermined period of time [e.g., 94, Fig. 3; Fig. 8].

24. As to claim 52, Cruickshank further teaches that the outputting includes displaying, using an output device, the assigned first status range in a matrix of a graphic including a graphical user interface, and further comprising displaying the first status information in the matrix using the output device, a first level of the first status range on the graphical user interface having a subordinate second representation level capable of being made visible by activation in the first level, the second representation level displaying system messages [e.g., 86, 88, Fig.3; paragraph 146].

25. As to claim 55, Cruickshank further teaches that the adjustable distribution in time comprises at least one of a constant or exponential distribution [e.g., paragraphs 30 and 47].

Claim Rejections - 35 USC § 103(a)

Art Unit: 2154

26. Claims 53-54 are rejected under 35 USC 103(a) as being unpatentable over Cruickshank et al.[U.S. PGPub 20030126256], further in view of Official Notice.

27. As to claim 53, Cruickshank teaches that the network monitoring is situated in an Intranet or Internet environments [e.g., paragraph 24]. Cruickshank is silent about the feature of using a browser to display and update the status information.

However, Official Notice is taken that Internet browser has been widely used to conduct various information presentations. It would have been obvious to one of ordinary skill in the art to use a browser, such as an Internet browser, to perform Cruickshank's display and update the status information because the Internet browser is free tool and it is already familiar to Internet users.

28. As to claim 54, Cruickshank further teaches time stamping the data packets that are obtained from all the measuring devices synchronously [e.g., paragraphs 33 and 82]. Cruickshank does not specifically use the example of monitoring communication delay between two measuring nodes. Therefore Cruickshank is silent about time stamping a data packet at the transmitting node as well as at the receiving node.

However, Official Notice is taken that measuring communication delay by actually sending a data packet by time stamping at the transmitting and receiving nodes is well known in the art. It would have been obvious to one of an ordinary skill in the art to have included communication delay measurements and use the typical time-stamping method to measure the various delay between network nodes because: (1)

communication delay is an essential part of network characteristics and (2) time-stamping a data packet for obtaining delay measurement between two stamping nodes is a efficient and feasible technique [For motivation see paragraph 13].

29. Applicant's arguments filed on 1/29/2008 for claims 25-53 have been fully considered but they are not deemed to be persuasive.

30. Specifically Applicant argues that the feature that the measured data packets are sent with an adjustable distribution in time is not taught by Cruickshank. Applicant disagrees with the examiner's assertion that "distributing data from node 1 to node 2" is functionally equivalent to "collecting data of node 1 by node 2".

31. In response, Applicant is directed to Cruickshank's specification, wherein Cruickshank teaches that measured data are collected periodically according to predetermined desired time intervals [paragraphs 30] and that some of the data for the calculation may be collected at a slower rate than other data [paragraph 47 and Table 1]. Overall, this tells that Cruickshank's data collection (or polling) interval is flexible and can be adjusted from time to time. On the other hand, Applicant has not been specific about the phrase "adjustable distribution in time" if it carries any meaning other than "distributed according to an adjustable time schedule or interval". As a matter of fact, the word "adjustable" only appears once in the entire specification (see paragraph 47) with an associated statement "(for example, a constant or exponential distribution)". Based

on such an unclear and imprecise statement, an ordinary skill in the art would not be able to guess beyond what the phrase has explicitly represented.

As for the issue of whether “distributing data from node 1 to node 2” is functionally equivalent to “collecting data of node 1 by node 2”, Applicant is reminded that in the specification Applicant teaches at paragraphs 7, 32 and 52: “The measurement results are retrieved from the measuring computers by a control computer ...”, wherein the word “retrieved” is clearly equivalent to “collected” in this context.

For at least the above reasons, it is submitted that Cruickshank reads on the claims, as clearly indicated in this office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wen-Tai Lin whose telephone number is (571)272-3969. The examiner can normally be reached on Monday-Friday(8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone numbers for the organization where this application or proceeding is assigned are as follows:

(571) 273-8300 for official communications; and

(571) 273-3969 for status inquires draft communication.

Art Unit: 2154

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Wen-Tai Lin

February 13, 2008

/Wen-Tai Lin/

Primary Examiner, Art Unit 2154

/Nathan J. Flynn/

Supervisory Patent Examiner, Art Unit 2826